

REMARKS

Claims 1-6 and 11-17 are pending in the Application and are now presented for examination. Claims 3 and 4 have been withdrawn. Claims 1 and 2 have been amended. No new matter has been added.

Claims 1-4 are independent.

Reconsideration of the Final Office Action of May 5, 2008, is respectfully requested.

The telephonic interview with Examiners Mercier and Woodward on July 01, 2008, is acknowledged with appreciation. The Interview Summary Report mailed July 30, 2008 has been received. This Amendment and the accompanying Second Declaration under 37 CFR 1.132 are submitted in accordance with the telephonic discussion and the Interview Summary.

Claims 1 and 2 are amended to recite the claimed composition as “stable” in accordance with the telephonic discussion. An editorial amendment is also made in Claim 2.

Claims 1-2, 5-6 and 11-17 were rejected as unpatentable under 35 U.S.C. 103(a) over Shanni (USP 5,631,012) in view of Deckers et al (USP 6,372,234). The gist of the rejection that was discussed was premised on lack of showing that removal of the moisturizer (vernix) of Shanni “would have a negative effect” (*sic*-“positive” is actually meant since applicant's position is that removal of vernix has a *positive* effect) on the lip gloss composition.

In this regard the Declaration under 37 CFR 1.132 that was filed with the prior Amendment was deemed insufficient since it was asserted to employ subjective analysis and could not constitute scientific data.

As was discussed telephonically, Applicant is able to evidence that the analysis is not subjective but rather is objective and results from evaluation by a panel capable of analyzing objectively. This is done in the accompanying Second Declaration under 37 CFR 1.132 of Dr. Jacobson which confirms that the results set forth in the previous Declaration were a panel's consensus and further presents later panel evaluations at 16 weeks ambient temperature and elevated temperature as well as results for 39 weeks ambient temperature and 16 weeks elevated temperature followed by 23 weeks ambient temperature. These evaluations demonstrate with results clearly acceptable as scientific data that when vernix is present the composition is not stable but rather loses its pleasant fragrance and is subject to serious cosmetic deterioration. In the Office Action the Examiner had noted that the claims did not recite the claimed composition. During the telephonic discussion it was agreed that "stable" could be added to the claims. This is done herein in currently amended independent Claims 1 and 2.

Further, in the Office Action the Examiner noted that results were not included with synthetic vernix, which Shanni indicates to be "a synthetically produced entity from commercially manufactured chemical compounds". The undersigned attorney said that a search would be undertaken to see if synthetic vernix could be located. If it could not, the undersigned attorney noted that it was not the lead material described by Shanni whose examples used only natural vernix. It was understood from the telephonic discussion that if, upon expert inquiry, synthetic vernix could not be found, the results with natural vernix would be sufficient to evaluate patentability. Dr. Jacobson made such inquiry at an expert institution, the Miami

Project to Cure Paralysis and, as indicated in the currently submitted 1.132 Declaration, he could not find a source of synthetic vernix.

Should the examiner consider outstanding issues remain, she is invited to telephone the undersigned attorney to discuss same. The undersigned attorney can be reached directly at 732-469-3882.

For the reasons set forth above it is respectfully requested that this Amendment be entered, the application be reconsidered and the claims allowed.

The Commissioner is hereby authorized to credit overpayments or charge payment of any additional fees associated with this communication to Deposit Account No. 502104.

Respectfully submitted,

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